

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

2022 ND 36

Byron Whetsel,

Petitioner and Appellant

v.

State of North Dakota,

Respondent and Appellee

Nos. 20210180, 20210181

Appeal from the District Court of Ransom County, Southeast Judicial District,
the Honorable Jay A. Schmitz, Judge.

AFFIRMED.

Per Curiam.

Benjamin C. Pulkrabek, Mandan, ND, for petitioner and appellant.

Fallon M. Kelly, State's Attorney, Lisbon, ND, for respondent and appellee.

Whetsel v. State
Nos. 20210180, 20210181

Per Curiam.

[¶1] Byron Whetsel appeals from an order dismissing his applications for post-conviction relief. In 2017, Whetsel was convicted of child abuse, child neglect, and murder. *See State v. Whetsel*, 2017 ND 237, 902 N.W.2d 924. In December 2017, Whetsel applied for post-conviction relief. The district court denied his application, which was affirmed on appeal. *See Whetsel v. State*, 2019 ND 237, 933 N.W.2d 466. In September 2020, Whetsel filed a second application for post-conviction relief. The district court denied his application, and the court's decision was reversed on appeal and remanded. *See Whetsel v. State*, 2021 ND 28, 955 N.W.2d 57. In December 2020, Whetsel filed a third application for post-conviction relief while the appeal was pending. The two cases were consolidated, and the State moved to dismiss. The district court granted the State's motion to dismiss, concluding the applications were brought outside the two-year statute of limitations under N.D.C.C. § 29-32.1-01(2) and none of the exceptions applied under N.D.C.C. § 29-32.1-01(3).

[¶2] On appeal, Whetsel argues the district court erred by denying his claim of ineffective assistance of post-conviction counsel. We conclude the district court did not err in determining Whetsel's applications are untimely and are barred by the statute of limitations. We summarily affirm under N.D.R.App.P. 35.1(a)(6).

[¶3] Jon J. Jensen, C.J.
Gerald W. VandeWalle
Daniel J. Crothers
Lisa Fair McEvers
Jerod E. Tufte